

## Federal Reserve System

## § 239.10

vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

### § 239.9 Conversion or liquidation of mutual holding companies.

(a) *Conversion*—(1) *Generally*. A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in subpart E of this part.

(2) Exchange of subsidiary savings association or subsidiary holding company stock. Any stock issued by a subsidiary savings association, or by a subsidiary holding company pursuant to § 239.24, of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the successor to parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company must demonstrate to the satisfaction of the Board that the basis for the exchange is fair and reasonable.

(3) If a subsidiary holding company or subsidiary savings association has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required account holder or shareholder votes.

(b) *Involuntary liquidation*. (1) The Board may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company and, if applicable, the stockholders of the subsidiary holding company in accordance with the charter of the mutual holding company and, if applicable, the charter of the subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any subsidiary savings association of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company to the extent of the FDIC's loss.

(c) *Voluntary liquidation*. The provisions of § 239.16 shall apply to mutual holding companies.

### § 239.10 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies*. The provisions of §§ 239.56 and 239.57(a) through (d) and (f) through (h) shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. Proxy materials must be in the form specified by the Board and contain the information specified in §§ 239.57(b) and 239.57(d), to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are required under this part, or as are necessary or appropriate under the disclosure standard set forth in § 239.57(f). File proxies and proxy statements in accordance with § 239.55(c) and address them to the appropriate Reserve Bank. For purposes of this paragraph, the term *conversion*, as it appears in the provisions of part subpart E of this part, refers to *the reorganization, the stock issuance, or other corporate action, as appropriate*.

(2) *Additional proxy disclosure requirements.* In addition to the requirements in paragraph (a) of this section, all proxies requesting accountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;

(iii) The fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association;

(iv) Any compensation agreements that will be entered into by management in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Subsidiary holding companies proposing non-conforming minority stock issuances pursuant to § 239.24(c)(6)(ii) must include in the proxy materials to accountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

(4) *Use of "running" proxies.* Unless otherwise prohibited, a mutual holding company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the matters and the member does not grant a

later-dated proxy to vote at the meeting at which the matter will be considered or attend such meeting and vote in person, and further provided that "running" proxies or similar proxies may not be used to vote for a mutual holding company reorganization, mutual-to-stock conversion undertaken by a mutual holding company, dividend waiver, or any other material transaction. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a member's votes on any and all matters presented to the members shall be deemed to cover the member's votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications under this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with the Board under this part must be filed in accordance with § 238.14 of this chapter. The Board will review any filing made under this part in accordance with § 238.14 of this chapter.

(c) *Reorganization Notices and stock issuance applications—(1) Contents.* Each Reorganization Notice submitted to the appropriate Reserve Bank pursuant to § 239.3(a) and each application for approval of the issuance of stock submitted to the appropriate Reserve Bank pursuant to § 239.24(a) shall be in the form and contain the information specified by the Board.

(2) *Filing instructions.* Any Reorganization Notice submitted under § 239.3(a) must be filed in accordance with § 238.14 of this chapter. Any stock issuance application submitted pursuant to § 239.24(a) shall be filed in accordance with § 239.55.

(3) *Public notice, public comment, and meetings.* Mutual holding company reorganizations are subject to applicable public notice, public comment, and meeting requirements under the Bank Merger Act regulations at § 238.11(e) of this chapter and the Savings and Loan Holding Company Act regulations at § 238.14 of this chapter.

(d) *Amendments.* Any mutual holding company may amend any notice or application submitted pursuant to this part or file additional information with respect thereto upon request of the Board or upon the mutual holding company's own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part must be processed in accordance with the processing procedures at § 238.14 of this chapter. Any related approvals requested in connection with Reorganization Notices or applications for approval of stock issuances (including, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, bylaws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by the Board of any materials used in connection with the issuance of stock under § 239.24 must not be subject to the applications processing time-frames set forth in §§ 238.14(f) and (g) of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c) of this section, shall be the same as set forth in § 238.14(b) of this chapter for notices, applications, and public comments filed under § 238.14 of this chapter.

(g) *Appeals.* Any party aggrieved by a final action by the Board which approves or disapproves any application or notice pursuant to this part may obtain review of such action in accordance with 12 U.S.C. 1467a(j).

(h) *Federal preemption.* This part preempts state law with regard to the creation and regulation of mutual holding companies.

#### § 239.11 Subsidiary holding companies.

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100 percent of the stock of its subsidiary savings association. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of this part. The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Board.

(b) *Stock issuances.* §§ 239.24 and 239.25 apply to issuance of stock by a subsidiary holding company. In the case of a stock issuance by a subsidiary holding company, the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50 percent of the subsidiary holding company's total outstanding common stock.

(c) *Charters and bylaws for subsidiary holding companies.* The charter and bylaws of a subsidiary holding company shall be in the form set forth in Appendices B and D, respectively.

#### § 239.12 Communication between members of a mutual holding company.

(a) *Right of communication with other members.* A member of a mutual holding company has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the mutual holding company regarding any matter related to the mutual holding company's affairs, except for "improper" communications, as defined in paragraph (c) of this section. The mutual holding company may not defeat that right by redeeming a savings member's savings account in the subsidiary savings association.

(b) *Member communication procedures.* If a member of a mutual holding company desires to communicate with other members, the following procedures shall be followed:

(1) The member shall give the mutual holding company a written request to communicate;